Supreme Court, U.S.
FILED
DEC 18 1995

No. 95-641

In the Supreme Court of the United States

OCTOBER TERM, 1995

THREE SISTERS SPORTSWEAR CO., ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether substantial evidence supports the National Labor Relations Board's findings that petitioners were part of a single employer for purposes of Section 8(a) of the National Labor Relations Act, 29 U.S.C. 158(a), and that petitioner 144 Spencer Realty Corp. was an alter ego of the other petitioners.

2. Whether the Board acted within its authority in fashioning the remedy in this case.

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OPINIONS BELOW

The judgment of the court of appeals (Pet. App. 1a-3a) is unpublished, but the decision is noted at 55 F.3d 684 (Table). The decision and order of the National Labor Relations Board (S. A. 124a-134a), [1] and the decision of the administrative law judge (S. A. 1a-123a), are reported at 312 N.L.R.B. 853.

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[1] "S. A." refers to the Supplemental Appendix filed with this Court by petitioners.

JURISDICTION

The judgment of the court of appeals was entered on April 28, 1995. A petition for rehearing was denied on July 3, 1995. Pet. App. 6a-7a. The petition for a writ of certiorari was filed on October 2, 1995 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1973, Southland Knitwear, Inc. (Southland) and Metropolitan Industries, Inc. (Metropolitan) began manufacturing and distributing knitwear at a facility located at 144 Spencer Street in Brooklyn, New York. S. A. 11a. Thereafter, the International Ladies' Garment Workers' Union (Union) attempted to organize the employees at that facility. In March 1982, the National Labor Relations Board (Board) issued a decision finding that Southland and Metropolitan (collectively, Southland-Metro) were a single integrated enterprise that, acting through its agents Jack Jacobowitz and his children Beirel, David, and Sylvia Jacobowitz, committed "egregious and widespread" unfair labor practices, in violation of Section 8(a)(1), (2), and (3) of the National Labor Relations Act (NLRA), 29 U.S.C. 158(a)(1), (2), and (3). S. A. 6a-7a. In May 1983, Southland-Metro entered into a stipulation with the Board under which Southland-Metro waived its right to seek judicial review of the Board's decision, and agreed to abide by that decision. *Id.* at 7a.

In mid-September 1983, Southland-Metro ostensibly shut down its operations at the 144 Spencer Street facility. Two weeks later, however, Southland-Metro resumed production at the same location under a series of new corporate names. S. A. 28a. Southland-

Metro's sewing machine operators were placed on the payroll of petitioner Three Sisters Sportswear Co. (Three Sisters), and Southland-Metro's cutting department employees were transferred to the payroll of petitioner Bedford Cutting Mills, Inc. (Bedford). *Id.* at 13a, 14a. At about the same time, Jack Jacobowitz created petitioners United Knitwear Industries, Inc. (United) and Skylight Fashions, Inc. (Skylight). *Id.* at 16a-17a. United became the coordinating arm of the resumed Southland-Metro operation: purchasing and cutting were handled by United and Bedford, respectively; sewing, cleaning, hanging, packaging, and shipping were performed by Three Sisters; and sales and collections were conducted by United and Skylight jointly. *Id.* at 17a. Petitioner 144 Spencer Realty Co. (Spencer) owned the 144 Spencer Street building, and shared office space and clerical employees with the other corporations. *Id.* at 23a, 24a.

2. In December, 1988, the Union once again launched an organizing campaign at the 144 Spencer Street plant (S. A. 42a), which resulted in the Union's filing numerous unfair labor practice charges. Based on those charges, the Board's General Counsel issued an amended consolidated complaint against Three Sisters, Bedford, United, and Skylight in June, 1991, alleging that those entities constituted a single integrated business enterprise, and that that single enterprise had committed numerous violations of Section 8(a)(1), (2), (3), and (4) of the NLRA, 29 U.S.C. 158(a)(1), (2), (3), and (4). S. A. 3a-4a.

a. After a hearing, during which the complaint was amended to include Spencer within the alleged single integrated business enterprise (S. A. 4a), the administrative law judge (ALJ) found that Three Sisters,

Bedford, United, Skylight, and Spencer constituted a single employer. *Id.* at 96a.

The ALJ explained that "[s]ingle employer status depends on all the circumstances of a particular case, and is characterized by an absence of an arm[']s length relationship found among unintegrated companies." S. A. 26a-27a. The ALJ also observed that, in making a single employer determination, "the Board considers factors such as interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control," and that "the use of common office facilities, common use of equipment, and family connections between or among the various enterprises" are also "relevant" to the single-employer inquiry. *Id.* at 26a. The ALJ noted that "[n]ot all of these factors must be found to establish the existence of a single employer, and no one factor is controlling." *Ibid.*

Applying those principles, the ALJ found that Three Sisters, Bedford, United, and Skylight constituted a single employer (S. A. 35a), and that Spencer was a part of that single employer. *Id.* at 38a. The ALJ observed that Spencer was "managed and owned by various members of the Jacobowitz family, as [are] the other corporate entities," and that "[h]ere, the evidence supporting the lack of an arm['s] length[] relationship between the parties is substantial." *Id.* at 37a.[2] In concluding that Spencer was part of the

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[2] The ALJ found that "Spencer never obtained any leases from any of the Jacobowitz dominated companies, while requiring leases from other tenants in the building"; that United and Skylight did not pay rent to Spencer; that Three Sisters and Bedford failed to make timely rent payments to Spencer on several occasions, and that "these delinquencies were never satisfied"; that United made loans in excess of

single integrated enterprise, the ALJ rejected petitioners' contention that Spencer could not be deemed part of that single employer because Spencer was a real estate firm, while Three Sisters, Bedford, United, and Skylight were in the business of manufacturing and distributing knitwear. *Id.* at 36a-37a. The ALJ explained that "[n]otwithstanding the different business purposes between real estate companies and other types of businesses, a single employer relationship can be found particularly where there is evidence of a lack of an arm[']s length relationship between the entities." *Id.* at 37a.

The ALJ also considered "the connection between Southland and Metropolitan and the present companies * * * in order to determine the propriety of the special remedies that [the Union] has requested." S. A. 10a. With regard to that question, the ALJ concluded that an alter-ego relationship existed between Three Sisters, Bedford, United, and Skylight, on the one hand, and Southland-Metro, on the other (*id.* at 31a-32a), and that an alter-ego relationship existed among Three Sisters, Bedford, United, and Skylight. *Id.* at 35a, 96a. The ALJ further found that an alter-ego relationship existed among Spencer, Three Sisters, Bedford, United, and Skylight (*id.* at 38a), inasmuch as Spencer was "managed and owned by various members of the Jacobowitz family, as [are] the other corporate entities," "the dealings between Spencer and the other companies cannot be characterized as

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$20,000 to Spencer, which Spencer never repaid; that, in October 1987, Spencer granted Bedford and Three Sisters "sudden unexplained reductions in rent * * * of 80[%] and 74% respectively"; and that Spencer and the other companies commingled their business records. S. A. 37a.

being at arm[']s length," and "Spencer shares office space, clerical employees and accounting services with the other companies." *Id.* at 37a, 38a.

On the merits of the General Counsel's complaint, the ALJ concluded that petitioners had committed "flagrant and extensive unfair labor practices" in connection with the Union's 1988 organizing campaign. S. A. 107a.[3]

b. The ALJ then turned to the task of fashioning an appropriate remedy for petitioners' unfair labor practices. S. A. 99a-110a. First, the ALJ issued an order requiring petitioners to cease and desist their unfair labor practices, to reinstate and make whole various discriminatees, and to post a customary remedial notice at the Spencer Street plant. *Id.* at

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[3] The ALJ found that petitioners violated Section 8(a)(1) of the NLRA, 29 U.S.C. 158(a)(1), by ordering employees not to accept and to rip up Union literature, referring to the Union as the "MAFIA," promising employees benefits to induce them to solicit co-workers to support another union, threatening employees with discharge and plant closure, threatening employees with unspecified reprisals if they spoke with co-workers who supported the Union, interrogating employees about their union sympathies, and creating the impression among the employees that their activities on behalf of the Union were under surveillance. S. A. 96a-97a. In addition, the ALJ found that petitioners' promise of benefits to employees to induce them to solicit their co-workers to support another union was a violation of Section 8(a)(2) of the NLRA, 29 U.S.C. 158(a)(2). S. A. at 97a.

The ALJ further found that petitioners violated Section 8(a)(1) and (3) of the NLRA, 29 U.S.C. 158(a)(1) and (3), by, among other things, verbally abusing, assaulting, and discharging employees who supported the Union (S. A. 97a-98a), and that petitioners violated Section 8(a)(4) of the NLRA, 29 U.S.C. 158(a)(4), by retaliating against an employee on whose behalf the Union had filed charges with the Board (S. A. 98a).

111a-114a. The ALJ rejected the Union's contention that petitioners should be ordered to reimburse it for its organizing expenses. *Id.* at 106a-107a. Although the ALJ agreed with the Union that "[petitioners] have committed flagrant and serious violations here, and that some of them are similar to the violations found in the prior [1982] case," the ALJ concluded that "[n]either the conduct here [n]or the frequency of the violations" supported an order requiring petitioners to reimburse the Union's organizing expenses. *Ibid.*

The ALJ did find, however, that petitioners' "flagrant and extensive" violations of the NLRA warranted the imposition of notice and access remedies. S. A. 107a-110a. The ALJ explained that "[h]ere, [petitioners] have discriminatorily laid off or discharged five unit employees, including a leading adherent of the [Union], Carmen Nieves." *Id.* at 108a. Petitioners' conduct toward Nieves, the ALJ found, was "particularly reprehensible, inasmuch as it included a barrage of obscenities plus physically blocking her from leaving the office at the time of her discharge, by David and Beirel Jacobowitz[, petitioners'] two highest officials." *Ibid.* The ALJ further observed that "when [petitioners] terminated Bella Martinez, [petitioners] by Beirel also subjected her to humiliating insults (referring to cockroaches and insects), plus a physical assault by removing her chair from under her and pushing her." *Ibid.* The ALJ noted that "[a]dditionally, after unlawfully terminating Rosita Chalston on two occasions, and being forced to reinstate her after an arbitration, [petitioners] continued to discriminate against her in several ways, including the almost inhuman practice of a supervisor clapping his hands whenever she

looked up from her work." *Ibid.* Finally, the ALJ explained that "most of the [Section] 8(a)(1) statements, including threats of discharge and plant closure were made by Beirel," and that "Beirel was also personally involved in the disgraceful conduct * * * at the time of the discharges of Nieves and Martinez, as well as the constructive discharge of [employee Israel] Galarza." *Ibid.*

The ALJ concluded that, under these circumstances, "the mere posting of a notice by [petitioners] will not be sufficient to make employees individually aware of [their] statutory rights and that [their] exercise of such rights will be respected by [petitioners]." S. A. 108a-109a. Accordingly, the ALJ ordered petitioners (in addition to posting a remedial notice at the plant) to publish a copy of the notice, signed by Beirel Jacobowitz, in two local newspapers twice weekly for a period of four weeks, and to mail a copy of the signed notice to current employees "as well as to all employees on their payroll since [petitioners] began their course of unlawful conduct in November of 1989." *Id.* at 109a-110a, 114a-115a. The ALJ also ordered Beirel Jacobowitz to read the signed notice personally to the employees at a meeting (or meetings) to be convened by petitioners for that purpose during working time. *Id.* at 109a, 115a. The ALJ found that it was appropriate to require Beirel Jacobowitz both to sign the notice and to read it to the employees because Beirel was petitioners' "chief executive," and was "responsible for and directly implicated in most of the violations." *Id.* at 109a. Thus, the ALJ explained, Beirel Jacobowitz's signature "directly place[s] on the notice the imprimatur of the person most responsible for the illegal acts in question," and his reading of the notice was neces-

sary to assure the employees that the "unlawful campaign [that] emanated from the top * * * will end * * * from the top." *Ibid.*

The ALJ also ordered petitioners to grant the Union reasonable access to "bulletin boards and all places where notices to employees are customarily posted" in the Spencer Street plant; to grant a reasonable number of Union representatives access to non-work areas of the plant, for reasonable periods of time, in order "to present [their] views on unionization to the employees," during non-work time; and to give the Union reasonable notice of, opportunity to attend, and "equal time and facilities" to respond to, any meeting of employees convened by petitioners at the plant respecting "the question of union representation." S. A. 115a-116a.[4] Finally, the ALJ ordered petitioners to permit the Union to make a 30-minute speech to employees during working time, in the event that the Union participated in a Board election within two years of the date on which petitioners posted the remedial notice at the plant. *Id.* at 116a-117a. The ALJ explained that these plant-access remedies were appropriate because petitioners had engaged in "flagrant and pervasive conduct rendering the possibility of fair election remote." *Id.* at 110a.

3. The Board affirmed the ALJ's single-employer and alter-ego findings, and affirmed the ALJ's remedy with the modification of allowing Beirel Jacobowitz the option of being present while a Board agent read

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[4] The ALJ specified that "[t]hese access provisions * * * shall apply for a period of 2 years from the posting of the notice, or until the Regional Director has issued an appropriate certification following a free and fair election, whichever comes first." S. A. 110a.

the notice to the employees (rather than requiring Jacobowitz to read the notice himself). With that modification,[5] the Board adopted the ALJ's order. S. A. 124a-134a. The Board explained that "[i]n requiring Beirel Jacobowitz to personally read the notice or be present while [it] is read, we emphasize that Beirel Jacobowitz personally committed the majority of the [Section] 8(a)(1) violations and personally engaged in the discriminatory treatment of four of the five discriminatees." *Id.* at 126a. "In view of his pervasive personal involvement in serious unfair labor practices," the Board concluded, "[Jacobowitz's] reading of the notice or his presence while it is read is necessary to dispel the atmosphere of intimidation he created." *Ibid.* The Board further observed that the "special access remedies" that the ALJ afforded the Union "are appropriate and necessary to dissipate the effects of [petitioners'] flagrant and extensive unfair labor practices." *Id.* at 125a-126a (footnote omitted).

4. The court of appeals summarily enforced the Board's order (Pet. App. 1a-3a), "substantially for the reasons set forth in the Board's decision." *Id.* at 2a.

ARGUMENT

Petitioners do not challenge the Board's unfair labor practice findings. They contend, however, that the Board exceeded its remedial authority by ordering the relief at issue in this case, and that the Board erroneously found petitioner Spencer to be part of the single integrated enterprise that violated the NLRA. The court of appeals' decision to enforce the

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[5] The Board made other minor modifications to the ALJ's order, none of which is pertinent here. S. A. 126a-128a.

Board's order was correct, and does not conflict with any decision of this Court or of another court of appeals. The Board's order, moreover, turns largely on the facts of this case. Further review is therefore not warranted.

1. Section 10(c) of the NLRA, 29 U.S.C. 160(c), authorizes the Board, in devising remedies for unfair labor practices, to "take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this [Act]." Pursuant to Section 10(c), the Board has "the primary responsibility and broad discretion to devise remedies that effectuate the policies of the Act, subject only to limited judicial review." *Sure-Tan, Inc.* v. *NLRB*, 467 U.S. 883, 898-899 (1984); see also *ABF Freight System, Inc.* v. *NLRB*, 114 S. Ct. 835, 839 (1994); *Fibreboard Paper Products Corp.* v. *NLRB*, 379 U.S. 203, 216 (1964); *Phelps Dodge Corp.* v. *NLRB*, 313 U.S. 177, 194 (1941).

In this case, the ALJ found that particularized notice and access remedies were appropriate because petitioners had met the Union's 1988 organizing campaign at the Spencer Street plant with unlawful conduct that was sufficiently "flagrant and pervasive" as to "render[ ] the possibility of fair election remote." S. A. 110a. The Board agreed with the ALJ, stressing that the notice and access remedies that the ALJ ordered were "appropriate and necessary to dissipate the effects of [petitioners'] flagrant and extensive unfair labor practices." *Id.* at 125a-126a (footnote omitted). The courts of appeals, moreover, have consistently held that, in cases involving egregious conduct, the Board acts within its broad remedial authority in ordering the employer to undertake notice and access measures of the kind at

issue here.[6] Accordingly, based on the facts of this case, the court of appeals correctly enforced the Board's order.

a. Petitioners' principal contention (Pet. 11) is that "[t]he Board's [f]ailure [t]o [c]onsider [t]he [e]ffects [o]f [t]he [p]assage [o]f [t]ime [b]etween [v]iolations [o]f [t]he Act [a]mounts [t]o [a]n [a]buse [o]f [t]he Board's [r]emedial [a]uthority." That contention lacks merit.

Petitioners assert (Pet. 11-12) that "Southland-Metro's relationship with the petitioners weighed heavily in the equation in assessing the remedies to

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[6] See, *e.g.*, *NLRB* v. *S.E. Nichols, Inc.*, 862 F.2d 952, 960, 962 (2d Cir. 1988) (notice to be read by company's president or Board agent, at employer's option; union granted reasonable access to company bulletin boards, equal time to respond to company speeches about union representation, and opportunity to make a 30-minute pre-election speech), cert. denied, 490 U.S. 1108 (1989); *Conair Corp.* v. *NLRB*, 721 F.2d 1355, 1384-1385 (D.C. Cir. 1983) (notice to be published in local newspapers; union granted access to company bulletin boards and employees in non-work areas during non-work times, equal time to respond to company speeches about union representation, and opportunity to make 30-minute pre-election speech during work time), cert. denied, 467 U.S. 1241 (1984); see also *Haddon House Food Products, Inc.* v. *NLRB*, 764 F.2d 182 (3d Cir. 1985), cert. denied, 475 U.S. 1011 (1986). In such cases, notice and access remedies "effectuate the policies of th[e] [Act]," 29 U.S.C. 160(c), because the notice component of the remedy serves "to inform the employees of their statutory rights and the legal limits on the [e]mployer's conduct, and to reassure them that further violations will not occur," while the access component is "designed to assist the [u]nion in communicating with the employees, and to assist the employees in hearing the [u]nion's side of the story without fear of retaliation." *Teamsters Local 115* v. *NLRB*, 640 F.2d 392, 399-400 (D.C. Cir.), cert. denied, 454 U.S. 827 (1981).

be imposed upon the petitioners—even though more than eight years had passed with no intervening violations," and that "[i]n failing even to consider this eight-year 'clean period,' the Board exceeded the scope of its authority and impermissibly imposed measures decidedly more punitive than remedial." See also *id.* at 3. Contrary to petitioners' assertions, however, the Board did not consider petitioners' alter-ego relationship with Southland-Metro, or the unfair labor practices that the Board previously had found Southland-Metro to have committed (see S. A. 6a-7a), in its decision to order notice and access remedies in this case. Rather, the ALJ deemed that past conduct to be relevant only to the question whether, as the Union urged, the Board should order petitioners to reimburse the Union for its organizing expenses. *Id.* at 106a-107a. While the ALJ concluded that the nature and frequency of Southland-Metro's and petitioners' conduct, taken together, did not warrant a reimbursement remedy (a conclusion that the Board was not asked to review), both the ALJ and the Board found that notice and access remedies were nonetheless appropriate because of the nature and extent of petitioners' own unfair labor practices. *Id.* at 107a-110a, 125a-126a.[7]

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[7] In any event, the Board's finding that petitioners have an alter-ego relationship with Southland-Metro further supports the Board's remedial order. Petitioners are recidivist violators of the NLRA; their egregious and pervasive unlawful conduct was a continuation of the same type of unlawful conduct in which Southland-Metro engaged in response to the Union's earlier effort to organize the employees at the Spencer Street plant. The fact that a period of years passed without intervening violations is attributable to the fact that it was not

Petitioners further contend (Pet. 12-15) that, because they are "first offender[s]," the Board abused its discretion in ordering notice and access remedies that, according to petitioners, are "typically reserved for the most hardened recidivists." Pet. 13. Petitioners' argument rests on the erroneous assumption that the Board's authority to issue particularized notice and access remedies is limited to cases of recidivist violators. The Board's authority is not so limited, nor has the Board in practice applied such remedies only to recidivists. See, *e.g.*, *Conair Corp.* v. *NLRB*, 721 F.2d 1355 (D.C. Cir. 1983), cert. denied, 467 U.S. 1241 (1984); *Teamsters Local 115* v. *NLRB*, 640 F.2d 392 (D.C. Cir.), cert. denied, 454 U.S. 827 (1981); *United Supermarkets, Inc.*, 261 N.L.R.B. 1291 (1982). In light of petitioners' undisputed commission of "flagrant and extensive" unfair labor practices, and the conclusion by the ALJ and the Board (S. A. 110a, 125a-126a) that petitioners' conduct had rendered "the possibility of fair election remote" (*id.* at 110a), the use of particularized notice and access remedies to dissipate the effects of that conduct was well within the Board's remedial authority.

b. Petitioners also contend (Pet. 16) that "the outcome here directly affronts the principles" of *NLRB* v. *Babcock & Wilcox Co.*, 351 U.S. 105 (1956). In *Babcock & Wilcox*, the Court held that "an employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees

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until December, 1988, that the Union resumed its organizational efforts at petitioners' plant.

with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution." 351 U.S. at 112. The rule of *Babcock & Wilcox*, however, does not delimit the scope of the Board's *remedial* authority under Section 10(c) of the NLRA; rather, that decision governs the extent to which an employer's refusal to afford non-employee union organizers access to its property may be deemed an unfair labor practice under Section 8(a)(1). See *NLRB* v. *S.E. Nichols, Inc.*, 862 F.2d 952, 962 (2d Cir. 1988), cert. denied, 490 U.S. 1108 (1989); *Teamsters Local 115*, 640 F.2d at 400.

Petitioners nonetheless assert (Pet. 17) that, because the employer has a property interest in the premises of its plant, this Court "should mandate that the Board sustain a heightened burden of making a 'clear showing' of the necessity for such extraordinary relief, as a prerequisite for authorizing broad plant access." Neither this Court nor any court of appeals has ever found such a "heightened burden" to be necessary or appropriate. As we have explained, moreover, the Board orders special access remedies only in those exceptional cases where the employer's violations are so egregious that the adverse consequences of its conduct cannot effectively be remedied by traditional means. In light of the "flagrant and pervasive" violations committed by petitioners, the Board reasonably concluded that this was such a case.[8]

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[8] Petitioners suggest (Pet. 17-18) that the decision below is inconsistent with the court of appeals' prior ruling in *United Steelworkers of America* v. *NLRB*, 646 F.2d 616 (D.C. Cir. 1981). In *United Steelworkers*, the court confirmed that "the Board has a broad authority to use access as a remedial measure if such a remedy is necessary to offset coercive effects caused

2. Contrary to petitioners' contention (Pet. 19), the Board did not rely solely on its finding of common ownership in determining that petitioner Spencer was part of the single employer in this case. Rather, the Board found Spencer to be part of the single employer entity because Spencer was "managed and owned by various members of the Jacobowitz family, as [are] the other corporate entities," and because there was "ample evidence in the record to support the conclusion that the dealings between Spencer and the other companies cannot be characterized as being at arm['s] length." S. A. 37a, 38a. The Board thus applied established law, see *Radio & Television Broadcast Technicians Local Union 1264* v. *Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965), to the particular facts of this case. Its fact-intensive conclusion that the criteria for single-employer status were satisfied here does not warrant further review.[9]

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by unlawful employer action." 646 F.2d at 639. The court concluded, however, that a remand was necessary in that case to enable the Board to explain why a corporate-wide remedy was necessary. *Id.* at 640-641. Here, by contrast, the ALJ and the Board fully justified the imposition of an access remedy through extensive factual findings. In any event, an intra-circuit conflict of the kind alleged by petitioners would not warrant this Court's intervention. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957).

[9] Petitioners also assert, without discussion, that "for the same reasons, the Board's determination that Spencer Realty was an alter ego of the petitioners was also in error." Pet. 22 n.15. The Board's alter-ego finding with respect to Spencer was not based solely on the fact that all petitioners share common ownership. As the ALJ explained, Three Sisters, Bedford, United, and Skylight took over operations at the Spencer Street plant "to avoid the backpay obligations of Southland-

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1995

Metro"; Spencer shared common ownership and management with Three Sisters, Bedford, United, and Skylight; and Spencer did not maintain arm's-length relationships with those entities. S. A. 35a, 37a-38a. The Board's finding that Spencer was an alter ego of the other petitioners—a finding that Member Raudabaugh concluded he need not even reach in concurring in the Board's order in this case (see S. A. 125a n.4) —does not warrant this Court's review.